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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,921	08/07/2001	Michael David Bell	CM2038	1887

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EXAMINER

FUBARA, BLESSING M

ART UNIT PAPER NUMBER

1615

DATE MAILED: 08/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,921

Applicant(s)

MICHAEL DAVID BELL

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Examiner acknowledges receipt of notice of appeal filed 03/17/03, request for extension of time, request for continued examination filed under 37 CFR 1/114 and preliminary amendment E all filed 08/06/03.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 08/06/03 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete because the claim fails to recite any active method step. The claim is examined as a method for reducing levels of tack in a skin care composition, the method comprising mixing a) ---- and b) ---.

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Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6, 10-11 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanner et al. (US 6,024,942).

Tanner discloses topical leave on skin care oil-in-water emulsion composition that comprises from about 0.1% to about 30% of a sunscreen active, from about 0.5% to about 20% of a hydrophobic structuring agent, from about 0.2% to about 10% of a hydrophilic surfactant, from about 0.1% to about 5% of a thickening agent, from about 0.1% to about 25% of a skin lightening agent and water (abstract and column 3, lines 21-27). The hydrophilic surfactant is selected from the group consisting of non-ionic surfactant, anionic surfactants, cationic surfactants, zwitterionic surfactants, amphoteric surfactants, and mixtures thereof (column 2, lines 56-59). The thickening agent is selected from the group consisting of carboxylic acid polymers, cross-linked polyacrylate polymers, polyacrylamide polymers, polysaccharides, gums, cross-linked vinyl ether/maleic anhydride copolymers, cross-linked poly(N-vinylpyrrolidones), and mixtures thereof (column 2, lines 61-67) and polysaccharides are water swellable. Tanner further discloses cellulose derivatives as polysaccharide thickening agent (column 15, line 41 to column 16, line 18). Since the cationic polymer of Tanner are the same as the cationic polymers of the instant application, the cationic polymer of Tanner would inherently have the recited glass

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transition temperature of the cationic polymers of the instant claims. The molecular weight of the polyacrylamide polymers is greater than 1,000,000 and this molecular weight is greater than a molecular weight of 20,000 as recited in instant claims 1 and 15. Regarding claims 6 and 10, a point in the cationic polymer ranging from about 0.1% to about 5% of the prior art would coincide with a point on the 0.01% to 20% or 0.01% to 10% by weight. A point in the 0.2% to 10% of the hydrophilic surfactant of Tanner would anticipate less than 4% or from less than 2% surfactant as recited in instant claims 1 and 12. When the upper limit of the cationic polymer, that is 5% and the lower limit of the surfactant, that is 0.2 are considered in Tanner, the ratio of the cation containing polymer to the surfactant is greater than 1. Tanner applies effective amount of the composition to the skin to protect the skin from UV radiation (claims 19-21). The method of instant claims 14 and 15 merely applies the composition to the skin and this method is anticipated by the method of Tanner where the composition is applied to the skin to protect the skin from UV radiation and protecting the skin by application of the composition of the prior art treats the skin.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. In the alternate, claim 12 is rejected under 35 U.S.C. 103(a) as obvious over Tanner et al. (US 6,024,942).

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Tanner teaches the cosmetic composition of the instant claims including claim 12. Claim 12 is considered anticipated when the upper limit of the cationic polymer, that is 5% and the lower limit of the surfactant, that is 0.2 are considered in Tanner, the ratio of the cation containing polymer to the surfactant is greater than 1. However, if this is not the case, the difference between Tanner and the instant claim 12 is that the ratio of the cationic polymer to the anionic surfactant is not specifically disclosed by Tanner to be greater than 1. But having a cosmetic composition where the gelling agent, in this case cationic polymer or polysaccharide is greater than the surfactant would be desirable to provide a gelled emulsion composition with the appropriate viscosity that will work as a leave on composition. Also, there is no demonstration that a composition where the cationic polymer is greater than the surfactant provides unusual results. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the emulsion composition of Tanner for a leave on application to the skin in order to protect the skin from UV radiation. One having ordinary skill in the art would have been motivated to prepare a composition that comprises more gelling agent than surfactant with the expectation of producing a gelled emulsion composition that has the appropriate viscosity.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jones et al. (WO 9603967) discloses a cosmetic composition comprising a gelling agent and conditioning polymer (abstract and page 1, lines 3-7). The gelling agent comprises copolymer of methyl vinyl ether/maleic anhydride that is cross-linked with C₄-C₁₆ alkadiene (PVM/MA decadiene crosspolymer) (page 2, lines 26 to page 3 line 34). The composition

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further comprises hair fixative polymer that are cationic copolymer of hydroxyethyl cellulose and diallyl dimethyl ammonium chloride known as POLYQUATERNIUM 4 (page 2, lines 30-32 and page 5, lines 24-35). The composition also contains carrier selected from C₁-C₆ alkanols, carbitol, acetone and mixtures thereof (page 5, lines 11-15). Cationic and non-ionic resins, and any polymer, cationic or non-ionic, having molecular weight in the range from about 1,000 to 5,000,000, and which is soluble or colloiddally dispersible in the cosmetic carrier may be utilized as the hair fixative polymer (page 6, lines 8-33 and page 7). Cationic polysaccharides, guar gum and homopolymers and copolymers derived from acrylic acid and/or methacrylic acid are examples of polycationic polymer resins utilized in the composition (page 7, lines 32 to page 8 line 3). The composition comprises from about 0.1% to about 10% by weight of hair fixative polymer (page 2, lines 31-33 and page 6, lines 1 and 2) and the hair fixative polymer is cationic hair fixative polymer. The disclosed amount of hair fixative polymer of from about 0.1% to about 10% meets the recited amount of from about 0.01% to about 20% because a point in the disclosed range will coincide with a point in the recited range. The composition of Jones can be formulated as leave-in hair cosmetic compositions such as gels or creams (page 8, lines 11-14). The composition optionally contains preservatives, surfactants, block copolymers, thickeners and viscosity modifiers (page 8, lines 26-35). See also claims 1-12. Furthermore, Jones discloses the presence of optional ingredients in the cosmetic composition at a level of from about 0.01% to about 5%, and some of the optional ingredients listed are surfactants, polyethylene glycol fatty acid esters, PEG-40 hydrogenated castor oil, long chain fatty acids, fatty alcohols and perfume oils (page 8, last paragraph, page 9, lines 9, lines 5, 6, 8, 12 and 16); and some of these optional

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ingredients are oils. In a composition where there is present oil and water, an emulsion forms.

Thus the cosmetic composition of Jones would inherently be an emulsion.

The instant claims are directed to a cosmetic composition comprising i) a polyacrylamide polymer having average molecular weight greater than 20,000 and ii) a cation containing water swellable polymer, where the composition comprises less than 4% of an anionic, zwitterionic or amphoteric surfactant. The surfactant in the composition of the instant invention is less than 4% and 0% is less than 4% and also 0.01 to 3.9% is less than 4%.

The prior art teaches optional surfactant and anionic, zwitterionic or amphoteric surfactant is encompassed in the generic disclosure of surfactant. It may be noted that the polymeric materials taught in the prior art are the polymeric materials taught in the invention and thus should have glass transition temperature of less than 0 °C or the same glass transition temperature as that recited in the instant claim.

Observation:

Claim 5 recites "cellulosic derivative" and the cellulose encompassed by the "cellulosic" is no ascertainable. It is suggested that the term --- cellulose--- be used in that claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

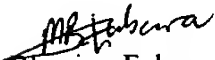
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.


Blessing Fubara
Patent Examiner
Tech. Center 1600